



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

December 15, 1995
AO-95-41

Edward Robinson-Lynch, Executive Director
Martha's Vineyard Community Services
P.O. Box 369
Vineyard Haven, MA 02568

Re: Political activity by officers and employees of community
services organization

Dear Mr. Robinson-Lynch:

This letter is in response to your November 9, 1995 request for an advisory opinion. You have stated that Martha's Vineyard Community Services ("MVCS") is a tax exempt non-profit corporation which provides health and human services programs to the residents of Martha's Vineyard. You receive funds from the commonwealth (including funds provided by the Department of Social Services, the Department of Mental Retardation, the Department of Mental Health, the Department of Public Health) and from the federal government (including Head Start, Victim of Crime funds, Medicaid and Medicare). Approximately half of your budget is derived from state and federal contracts for services, the balance is derived from fees received for services or fundraising.

You have also stated that none of your employees are under the control or supervision of the commonwealth. Employees of MVCS do not participate in the commonwealth's retirement programs, and do not receive other benefits provided to state employees. All MVCS employees receive a salary from MVCS and are under the control or supervision of MVCS or are independent contractors employed by MVCS.

You have asked three questions, each of which I will address separately.

1. May you or other MVCS employees assist in or manage a campaign - after work hours - on behalf of a candidate for state or federal office, involving participation in the following political activities: fundraising, mail or telephone calling, voter registration, holding of campaign signs, wearing buttons, and conducting candidate forums or other campaign meetings?

Yes. The campaign finance law, M.G.L. c. 55, does not prohibit employees of MVCS from undertaking such political activities.

Sections 13, 14 and 15 of the campaign finance law relate most directly to your question. Section 13 states that persons employed for compensation "by the commonwealth or any county, city or town"¹ may not solicit or receive contributions for any political purpose. Section 14 prohibits solicitation or receipt of contributions in "any building or part thereof occupied for state, county or municipal purposes." Section 15 provides that "persons in the service of the commonwealth or of any county, city or town" may not "give or deliver to an officer, clerk or [other] person in said service . . . any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever."

Since MVCS receives funds from the state pursuant to contract, but is not subject to the control of the state, MVCS may be considered an "independent contractor." Section 13 applies only to appointed persons "employed" by the commonwealth or one of its subdivisions; it does not apply to persons employed by independent contractors.

The last part of your question suggests that political fundraising activities, e.g., meetings at which fundraising activities are discussed or take place, may be contemplated in MVCS buildings. Political fundraising may not take place in MVCS buildings if they are "occupied for municipal purposes." Section 14 must be narrowly construed since it is a criminal statute. See Weld for Governor v. Director of OCPF, 407 Mass. 761, 766 (1990). Merely providing services to the public in accordance with contracts with the commonwealth does not compel a conclusion that MVCS buildings are subject to the prohibition stated in section 14.

Section 14 provides that fundraising "for the purposes set forth in section thirteen" is prohibited in buildings occupied for municipal purposes. Although there may be instances where section 14 prohibits fundraising in workplaces of employees who are not subject to section 13, this is not such an instance. Employees of MVCS provide counseling services, special needs support, women's support, visiting nurse services, and early childhood programs. The provision of these services is not exclusively within the jurisdiction of the commonwealth or of municipalities, and section 14 should not be extended to prohibit political fundraising in MVCS buildings.

Whether section 15 applies to persons employed by MVCS depends on whether such persons are "persons in the service." This office has stated that section 15 "was intended to include any elected, appointed or other person, regardless of compensation, who is providing significant public services to

¹ See also s. 179 of Chapter 655 of the Acts of 1989, which states that "all officers, directors and employees of state authorities and all trustees and employees of state institutions of higher education are hereby made subject to the provisions of chapter fifty-five of the General Laws, including sections thirteen through seventeen, inclusive, thereof."

the commonwealth or one of its subdivisions or authorities." See AO-92-01. The office has also stated that "the fact of official appointment or election to office is an important, if not essential, criterion in determining whether someone is a 'person in the service' for purposes of section 15." Id. MVCS employees are not appointed by or under the control of a subdivision of the commonwealth. Therefore, persons employed by MVCS are not "persons in the service" notwithstanding the significant public services provided by MVCS.

In conclusion, the campaign finance law does not prohibit MVCS employees from becoming involved in the political activities referenced in your first question.

You should contact the Internal Revenue Service to ensure that the contemplated activities would not jeopardize your status as a tax-exempt organization. See 26 U.S.C. 501(c)(3), which provides, in part, that certain corporations are exempt from taxation if "no substantial part of the activities" of the corporation involve "carrying on propaganda" and the corporation "does not participate in . . . any political campaign on behalf of (or in opposition to) any candidate for public office."

In addition, your employment by an agency which receives federal funds may subject you to restrictions under federal law or state laws other than the campaign finance law. You should contact the U.S. Merit Systems Protection Board, which administers the Hatch Political Activity Act, to determine the extent of any obligations under federal law. In addition, you should contact the federal (and state) agencies which provide MVCS with funds to ensure full compliance with laws and regulations administered by such agencies.

2. May volunteer members of the MVCS board of directors participate in political activities such as those discussed above?

Yes. Membership in the MVCS board of directors would not affect a person's ability to engage in political fundraising activities.

3. May the political activities listed in Question #1 occur during work hours or at work?

Other than the wearing of political buttons, the activities listed should not be undertaken during MVCS employees' work hours. The campaign finance law does not permit appropriated public monies (and governmental resources paid for by such monies) to be used for political purposes. See Anderson v. City of Boston, 376 Mass. 178 (1978). This office has consistently advised organizations funded by state and federal tax revenue that such organizations are subject to the prohibition, articulated in Anderson, against the use of public funds for political purposes. See AO-89-21 (Massachusetts Municipal Association, which receives financial support from assessments made to member cities and towns, could not use such funds to influence ballot question).

I understand that although much of MVCS's financial support comes from fundraising, fees, or federal sources, all of the funds are commingled. Such funds include, to a substantial extent, Massachusetts tax revenue which may not be used for political purposes absent legislation. Therefore, assuming some part of an employee's salary is derived from such tax revenue, the employee should not use his or her work day to become involved in political activities, nor should any of the resources of MVCS, including supplies and equipment, be utilized for any political purpose. Although the wearing of a political button would be consistent with the campaign finance law, other activities, to the extent they reduce an employee's available work hours, would raise substantial concerns.

Policy-making officials, such as the CEO of MVCS, may act and speak subject to certain limitations, in reference to ballot questions. In IB-92-02, the office noted that "if policy-making officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily restrain such officials from carrying out the duties of their offices." Therefore, during your workday or otherwise, you may respond to inquiries, or have staff analyze the effect of a ballot question, or the success of a particular candidacy, on MVCS.

This opinion has been rendered solely on the basis of representations made in your letter and conversations with OCPF staff. As noted in response to your first question, this opinion is intended to provide guidance solely within the context of the campaign finance law. You should contact other agencies as needed to obtain further information.

Please do not hesitate to call if you have additional questions regarding campaign finance matters.

Sincerely,



Michael J. Sullivan
Director

MJS/cp